

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, NW
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

August 4, 2003

MEMORANDUM

Enclosed is a copy of proposed amendments to Addendum Three, Rules of the Judicial Council of the Eleventh Circuit Governing Complaints of Judicial Misconduct or Disability. Additions to and changes in existing Addendum Three are shown within shaded blocks on printed copies (and in red type in PDF format on the Internet at www.ca11.uscourts.gov). Recommended deletions from existing Addendum Three are shown with strike marks through them.

If you wish to offer comments concerning the proposed amendments please direct them to me at the above address in the form of a letter by September 5, 2003. Thank you for your interest.

Sincerely,

Thomas K. Kahn
Clerk

1 **RULES OF THE JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT**
2 **GOVERNING COMPLAINTS OF JUDICIAL MISCONDUCT OR DISABILITY**

3
4
5 **Preface**

6
7 ~~Section 372(c)~~ **Chapter 16** of title 28, United States Code (hereinafter, ~~§ 372(c)~~ **Chapter**
8 **16**), which is reproduced in Appendix A to these Rules, authorizes a person to file, or the Chief
9 Judge of the Eleventh Circuit to identify, a complaint that a circuit judge, district judge, bankruptcy
10 judge, or magistrate judge has "engaged in conduct prejudicial to the effective and expeditious
11 administration of the business of the courts" or is "unable to discharge all of the duties of office by
12 reason of mental or physical disability." For purposes of these Rules, the term "Chief Judge" shall
13 refer to the Chief Judge of the Eleventh Circuit and, when the Chief Judge is precluded from
14 exercising his authority under ~~§ 372(c)~~ **Chapter 16**, to the circuit judge in regular active service next
15 senior to the Chief Judge.

16
17 ~~Section 372(c)~~ **Chapter 16** does not provide an alternative means of obtaining judicial
18 review of judicial decisions thought to be erroneous. A complaint that is either "directly related to
19 the merits of a decision or procedural ruling" or is "frivolous, **lacking sufficient evidence to raise an**
20 **inference that misconduct has occurred, or containing allegations which are incapable of being**
21 **established through investigation"** shall be dismissed.

22
23 **Authority:** ~~§ 372(c)(1), (2), (3)(A)~~ **28 U.S.C. §§ 351, 352.**

24
25
26 **Chapter I. Complaint of Judicial Misconduct or Disability**

27
28 **RULE 1. FILING OF COMPLAINT**

29
30 **(a) Form.** Complaints of judicial misconduct or disability under ~~§ 372(c)~~ **Chapter**
31 **16** are to be filed on the official form provided by the Clerk of the United States Court of Appeals
32 for the Eleventh Circuit (hereinafter, the Clerk), which is reproduced in Appendix B to these Rules.
33 This form is available on the court's web site at www.ca11.uscourts.gov, or may be obtained by
34 visiting or writing to the office of the Clerk at the address shown in paragraph (g), below, or by
35 telephoning that office at 404-335-6577. The form may also be obtained from the clerk of any
36 district court or bankruptcy court within the Eleventh Circuit. A separate complaint form must be
37 filed for each complained-of judge. Complaints must be legible; if possible, they should be
38 typewritten.

39
40 **(b) Statement of facts.** A statement of facts should be attached to the complaint
41 form, setting forth with particularity the facts on which the claim of misconduct or disability is
42 based. The statement of facts must be on 8½ x 11 inch paper. Only one side of the paper may be
43 used. The text must be double-spaced, but quotations more than two lines long may be indented and
44 single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on
45 all four sides. Page numbers may appear in the margins but no text may appear there. If typed,

1 either a proportionally spaced or monospaced typeface may be used. A proportionally spaced
2 typeface must be 14-point or larger; a monospaced typeface may not contain more than 10½
3 characters per inch. The statement of facts may not exceed five (5) pages, and should include:

- 4
5 (1) a description of the conduct complained of;
6 (2) the time and place of the occurrence (or occurrences) of such
7 conduct; and
8 (3) other information, such as the names and addresses of any witness
9 to such conduct, that would assist an investigator in confirming that
10 the conduct occurred.
11

12 (c) **Submission of documents.** Documents referred to in the statement of facts
13 may be filed with the complaint. The statement should cite the page(s) of such document(s) that the
14 complainant deems pertinent to the allegations of the complaint.
15

16 (d) **Number of copies.** Three copies each of the complaint, statement of facts, and
17 any document(s) filed therewith are to be filed with the Clerk.
18

19 (e) **Signature.** The complainant shall sign the complaint (in the space provided
20 on the form) and thereby declare under penalty of perjury that the allegations in the complaint are
21 true.
22

23 (f) **Anonymous complaints.** An anonymous complaint shall not be accepted for
24 filing by the Clerk. Nonetheless, the Clerk shall forward such a complaint to the Chief Judge.
25

26 (g) **Place of filing.** Complaints shall be sent in an envelope to:

27
28 Clerk
29 United States Court of Appeals
30 56 Forsyth Street, N.W.
31 Atlanta, Georgia 30303
32

33 The envelope shall be marked "~~Section 372(e)~~ **Chapter 16** Complaint." The name of the complained-
34 of judge shall not appear on the envelope.
35

36 (h) **Supplementation.** Once filed, a complaint may not be supplemented or
37 modified by additional statements or documents unless authorized by order of the Chief Judge.
38

39 (i) **No filing fee.** There is no filing fee for complaints of misconduct or disability.
40

41 (j) **Abuse of the Complaint Procedure.** A complainant who files vexatious,
42 repetitive, harassing, or frivolous complaints, or otherwise abuses the complaint procedure, may be
43 restricted as set forth below.
44

1 (1) **Multiple complaints by a single complainant.** After affording the
2 offending complainant an opportunity to show cause in writing why
3 his or her ability to file further complaints should not be limited, the
4 judicial council may restrict or impose conditions upon the
5 complainant's use of the complaint procedure. Such restrictions or
6 conditions will be narrowly tailored to address the specific problems
7 encountered.

8
9 (2) **Identical or substantially identical complaints submitted en**
10 **masse by multiple complainants.** The Chief Judge may direct the
11 Clerk not to formally process any additional complaints identical or
12 substantially identical to a complaint that has already been filed or
13 concluded, but instead to provide those additional complainants
14 with a copy of the public record order disposing of the first such
15 matter filed. No further action shall be taken with respect to any
16 such identical or substantially identical complaints.

17
18 **Authority:** ~~§ 372(c)(1)~~ 28 U.S.C. §§ 351, 352.
19
20

21 **RULE 2. IDENTIFICATION OF COMPLAINT**

22

23 In the interests of the effective and expeditious administration of the business of the courts
24 and on the basis of information available to the Chief Judge, the Chief Judge may, by written order
25 stating reasons therefor, identify a complaint and thereby dispense with the filing of a written
26 complaint. If a complaint is identified under this Rule, the Chief Judge shall not be considered a
27 complainant and shall perform all functions assigned to the Chief Judge under these Rules.

28
29 **Authority:** ~~§ 372(c)(1)~~ 28 U.S.C. § 351(b).
30
31

32 **RULE 3. RECEIPT OF COMPLAINT**

33

34 (a) **Receipt of complaint in proper form.** Upon receipt of a complaint filed in
35 the form required by Rule 1, the Clerk shall acknowledge receipt of the complaint and transmit
36 copies thereof to the Chief Judge and to the complained-of judge.

37
38 (b) **Receipt of complaint not in proper form.** Upon receipt of a complaint not
39 filed in the form required by Rule 1, the Clerk shall return the complaint to the complainant and
40 explain why it was returned.

41
42 (c) **Docket.** The filing of a complaint received in proper form shall be entered on
43 the Clerk's miscellaneous docket. A docket sheet shall be maintained for each complaint and any

proceedings relating thereto. The docket sheet shall not identify the complainant or the complained-of judge and shall be maintained under seal unless the Chief Judge directs that the docket sheet be a part of the miscellaneous docket available to the public.

(d) Filed materials. The Clerk shall enter on the docket all orders, notices, and other papers transmitted by the Chief Judge or the Judicial Council to the Clerk for filing, as well as all papers relating to any activities of the Clerk, such as the issuance of subpoenas, taken pursuant to orders of the Chief Judge or the Judicial Council. These materials shall be maintained under seal unless the Chief Judge directs that they be available to the public.

Authority: ~~§ 372(e)(2)~~ 28 U.S.C. §§ 351(c), 360.

Chapter II. Review of Complaint by Chief Judge

RULE 4. REVIEW OF COMPLAINT; LIMITED INQUIRY

(a) Expeditious Review; Limited Inquiry. The Chief Judge shall expeditiously review a complaint filed in proper form. In determining what action to take, the Chief Judge may conduct a limited inquiry for the purpose of determining —

- (1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation; and
- (2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation.

For this purpose, the Chief Judge may request the complained-of judge to file a written response to the complaint. Such response shall not be made available to the complainant unless authorized by the judge filing the response. The Chief Judge or his or her designee may also communicate orally or in writing with the complainant, the complained-of judge, and any other person who may have knowledge of the matter, and may review any transcripts or other relevant documents. The Chief Judge shall not undertake to make any findings of fact about any matter that is reasonably in dispute.

(a-b) Dismissal of complaint. ~~Upon receipt of~~ After reviewing a complaint filed in proper form, the Chief Judge may dismiss the complaint if —

- (1) the allegations of the complaint, even if true, do not describe "conduct prejudicial to the effective and expeditious administration of the business of the courts" or do not indicate that the complained-of judge is "unable to discharge all the duties of office by reason of mental or physical disability";
- (2) the allegations of the complaint are "directly related to the merits of a decision or procedural ruling";

- (3) the complaint is "frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation"; ~~or~~
- (4) the allegations in the complaint "lack any factual foundation or are conclusively refuted by objective evidence"; or
- (4~~5~~) "appropriate corrective action has been taken" or "that action on the complaint is no longer necessary because of intervening events".

The Chief Judge shall dismiss the complaint by written order setting forth the reason(s) for the dismissal. The order shall identify the complainant and the complained-of judge and shall be maintained by the Clerk under seal. The Clerk shall provide to the complainant and the complained-of judge a copy of the order and shall notify them of the right to petition the Judicial Council for review of the order of dismissal. In addition to the order maintained under seal, the Chief Judge shall issue an order of dismissal that shall be part of the public record; such order shall not identify, directly or indirectly, the complainant or the complained-of judge.

(b-c) Appointment of special committee. If the complaint is not dismissed pursuant to paragraph (a~~b~~), the Chief Judge shall appoint a special committee, in accordance with Rule 8, to investigate the allegations of the complaint and to report thereon to the Judicial Council. The Chief Judge shall notify the complainant and the complained-of judge of the appointment of a special committee and of the identity of its members.

(c-d) Report to Judicial Council. The Chief Judge may, from time to time, report to the Judicial Council on actions taken under this Rule.

Authority: § 372(c)(3), (4) 28 U.S.C. §§ 352, 353.

Chapter III. Review by Judicial Council of Order of Dismissal by Panel

RULE 5. PETITION FOR REVIEW

(a) Time and Place of Filing. A petition for review of an order dismissing a complaint may be filed with the Clerk within 30 days of the entry on the docket sheet of the order of dismissal.

(b) Form. A petition shall be in the form of a letter addressed to the Clerk, signed by the aggrieved complainant or complained-of judge, and enclosed in an envelope marked "~~Section 372(c)~~ Chapter 16 Petition." The name of the complained-of judge shall not appear on the envelope. The petition shall set forth a brief statement of the reason(s) why the complaint should not have been dismissed. The petition shall not restate the allegations of the complaint. The petition must be on 8½ x 11 inch paper. Only one side of the paper may be used. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes

1 may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may
2 appear in the margins but no text may appear there. If typed, either a proportionally spaced or
3 monospaced typeface may be used. A proportionally spaced typeface must be 14-point or larger; a
4 monospaced typeface may not contain more than 10½ characters per inch. The petition may not
5 exceed five (5) pages. Attachments to a petition are not permitted.

6
7 **(c) Referral of Petitions for Review to Panels of the Judicial Council.** The
8 Judicial Council may refer a petition for review filed pursuant to this rule to a panel of no fewer than
9 five members of the Judicial Council, at least two of whom shall be district judges.

10
11 **Authority:** § 372(c)(10) 28 U.S.C. §§ 352(c), 352(d).

12 13 14 **RULE 6. RECEIPT OF PETITION FOR REVIEW**

15
16 **(a) Receipt of timely petition in proper form.** Upon receipt of a petition for
17 review filed in the form required by Rule 5(b) within 30 days of the entry on the docket sheet of the
18 order of dismissal, the Clerk shall acknowledge receipt of the petition and transmit a copy thereof
19 to the complained-of judge, if the complainant is the petitioner, or to the complainant, if the
20 complained-of judge is the petitioner, and to the Chief Judge. Thirty (30) days after the entry of the
21 petition for review on the docket sheet, the Clerk shall send to each non-disqualified member of the
22 ~~Judicial Council~~ a review panel established pursuant to Rule 5(c) (hereinafter, review panel), and
23 to the Circuit Executive, copies of (1) the complaint; (2) the order dismissing the complaint; (3) the
24 petition for review; and (4) a ballot in the form specified in Rule 7(a).

25
26 **(b) Receipt of petition not in proper form or out of time.** Upon receipt of a
27 petition for review not filed in the form required by Rule 5(b) or not filed within 30 days of the entry
28 on the docket sheet of the order of dismissal, the Clerk shall return the petition to the petitioner and
29 explain why the petition was returned.

30
31 **Authority:** § 372(c)(11) 28 U.S.C. §§ 352(c), 352(d).

32 33 34 **RULE 7. REVIEW OF ORDER OF DISMISSAL**

35
36 **(a) Ballot.** The ballot referred to in Rule 6(a) shall ask the non-disqualified
37 members of the ~~Judicial Council~~ review panel whether the petition for review should be considered
38 at the next meeting of the ~~Council~~ review panel. If, within 21 days of the date on which the Clerk
39 sent the ballot to the members of the ~~Council~~ review panel, no member of the ~~Council~~ review panel
40 votes that the petition be considered at the next meeting, the order of dismissal shall be deemed
41 affirmed.

1 **(b) Response by complained-of judge.**

2
3 (1) If the petitioner seeking review of the order of dismissal is the
4 complainant, the complained-of judge may, within 21 days of the filing of the petition for
5 review, file with the Circuit Executive a response to the petition. The response shall be
6 sent in an envelope to:

7
8 Circuit Executive
9 Judicial Council of the Eleventh Circuit
10 56 Forsyth Street, N.W.
11 Atlanta, Georgia 30303
12

13 (2) The Circuit Executive shall transmit a copy of the response to the non-
14 disqualified members of the ~~Judicial Council~~ **review panel** and the complainant. The
15 complained-of judge shall not otherwise communicate with the **review panel or any of the**
16 **members of the** Judicial Council ~~or any of its members~~ about the matter.
17

18 (3) The Circuit Executive shall provide to the complained-of judge
19 copies of any correspondence from the complainant to the **review panel or the** Judicial
20 Council.
21

22 **(c) Decision by ~~Judicial Council~~ **Review Panel**.**

23
24 (1) A petition for review placed on the agenda of a meeting of the ~~Judicial~~
25 ~~Council~~ **a review panel** shall be decided by a majority of the non-disqualified members
26 present at the meeting.
27

28 (2) ~~The Judicial Council's~~ **A review panel's** decision shall be by written order
29 setting forth the reason(s) therefor. The order shall identify the complainant and the
30 complained-of judge and shall be maintained by the Clerk under seal. The Circuit
31 Executive shall provide to the complainant and the complained-of judge a copy of the
32 order and any separate or dissenting statements issued by members of the ~~Council~~ **review**
33 **panel**, and shall inform them that the ~~Council's~~ **review panel's** decision is unreviewable.
34 The Circuit Executive shall also transmit a copy of the order to the Chief Judge. In
35 addition to the order maintained under seal, the ~~Judicial Council~~ **review panel** shall issue
36 an order that shall be part of the public record; such order shall not identify, directly or
37 indirectly, the complainant or the complained-of judge.
38

39 **Authority:** ~~§ 372(c)(6)(D), (10)~~ **28 U.S.C. §§ 352(c), 352(d).**
40
41

1 **Chapter IV. Investigation by Special Committee**

2
3 **RULE 8. APPOINTMENT OF SPECIAL COMMITTEE**

4
5 **(a) Membership.** A special committee appointed pursuant to Rule 4(b-c) shall
6 consist of the Chief Judge and equal numbers of circuit and district judges. The district judge
7 members of a special committee appointed to investigate a complained-of district, bankruptcy, or
8 magistrate judge shall be from districts other than the district of such complained-of judge.

9
10 **(b) Presiding officer.** At the time of the appointment of the special committee,
11 the Chief Judge shall designate one member (who may be the Chief Judge) as the presiding officer.

12
13 **(c) Adviser.** If the complained-of judge is a bankruptcy judge or magistrate judge,
14 the Chief Judge may appoint a bankruptcy judge or magistrate judge, as the case may be, to serve
15 as an adviser to the special committee. The Chief Judge shall appoint such an adviser if, within ten
16 days of notification of the appointment of the committee, the complained-of bankruptcy judge or
17 magistrate judge requests that such an adviser be appointed. The adviser shall be from a district
18 other than the district of the complained-of judge.

19
20 **(d) Provision of documents.** The Chief Judge shall transmit to the other members
21 of the special committee (and to the adviser, if any) copies of the complaint and any documents
22 pertaining to the committee's investigation.

23
24 **(e) Continuing qualification of committee member.** A judge appointed to a
25 special committee may continue to serve on the committee after becoming a senior judge or, in the
26 case of the Chief Judge, after his or her term as Chief Judge terminates.

27
28 **(f) Death or resignation of committee member.** If a judge appointed to a special
29 committee dies or retires from office under 28 U.S.C. § 371(a), the Chief Judge may appoint another
30 circuit or district judge, as the case may be, to the committee. In any event, the committee must have
31 at least three members.

32
33 **Authority:** ~~§ 372(c)(4)~~ **28 U.S.C. § 353.**

34
35
36 **RULE 9. INVESTIGATION AND REPORT**

37
38 **(a) Scope of investigation.** The special committee shall conduct an investigation
39 as extensive as it considers necessary. If, in the course of the investigation, the committee has reason
40 to believe that the complained-of judge may have engaged in misconduct that is beyond the scope
41 of the complaint or the complained-of judge may be unable to discharge the duties of office because
42 of mental or physical disability, the committee may expand the scope of its investigation.

43
44 **(b) Criminal matters.** If the complaint alleges or the special committee has reason
45 to believe that the complained-of judge has engaged in criminal conduct, the committee may consult

1 with appropriate law enforcement authorities. Unless disclosure of the matter has been authorized
2 under ~~§ 372(c)(14)~~ **28 U.S.C. § 360**, however, the committee shall not disclose to such authorities
3 the identity of the complained-of judge or information which would, in effect, disclose the judge's
4 identity.

5
6 **(c) Subpoena powers.** The Chief Judge may delegate to the presiding officer the
7 authority to exercise the special committee's subpoena powers as provided in 28 U.S.C. § 332(d).
8 Witness fees shall be paid as provided in 28 U.S.C. § 1821.

9
10 **(d) Staff.** To assist it in its work, the special committee may use staff of the
11 judicial branch or may arrange, through the Administrative Office of the United States Courts, for
12 the hiring of additional staff.

13
14 **(e) Voting.** All actions of the special committee shall be taken by a vote of a
15 majority of the members.

16
17 **(f) Report.** The special committee shall submit to the Judicial Council a
18 comprehensive written report of its investigation and the record of any hearings the committee may
19 have conducted. The committee's report shall present both the findings of the investigation and the
20 committee's recommendations for action by the Judicial Council. The report shall also include any
21 separate or dissenting statements by members of the committee.

22
23 **Authority:** ~~§ 372(c)(5), (9)(A)~~ **28 U.S.C. §353.**

24
25
26 **RULE 10. HEARINGS**

27
28 **(a) Purpose of hearings.** The special committee may hold hearings to take
29 testimony, receive other evidence, or hear argument. If the committee is investigating allegations
30 against more than one judge, it may hold joint hearings.

31
32 **(b) Notice to complained-of judge.** The special committee shall give the
33 complained-of judge written notice of (1) any hearing it intends to hold; (2) his or her right to attend
34 the hearing; (3) the purpose(s) of the hearing; and (4) the name(s) of any witness(es) that the
35 committee intends to call. The complained-of judge may suggest additional witnesses to the
36 committee.

37
38 **(c) Witnesses called by special committee.** The special committee shall call as
39 a witness any person who may have information pertaining to the allegations in the complaint. Both
40 the members of the committee and the committee's counsel or investigator(s) may examine the
41 witnesses. The complained-of judge, personally or through counsel, shall have the right to cross-
42 examine the witnesses.

43
44 **(d) Witnesses called by complained-of judge.** The complained-of judge,
45 personally or through counsel, may call witnesses and examine them. The complained-of judge may

1 also request the Chief Judge to direct the Clerk to issue subpoenas in accordance with 28 U.S.C.
2 § 332(d). The special committee or its counsel or investigator(s) may examine any witness called
3 by the complained-of judge.

4
5 **(e) Testimony under oath.** Testimony before the special committee shall be given
6 under oath or affirmation.

7
8 **(f) Record.** Any hearing before the special committee shall be recorded by a court
9 reporter or a recording device.

10
11 **Authority:** ~~§ 372(c)(11)~~ 28 U.S.C. §358(b).
12
13

14 **RULE 11. RIGHTS OF COMPLAINED-OF JUDGE**
15

16 **(a) Notice.** The complained-of judge shall receive notice of the appointment of
17 a special committee, see Rule 4(b-c); notice of any expansion of the scope of the committee's
18 investigation, see Rule 9(a); and notice of any hearing to be held by the committee and of his or her
19 rights to examine witnesses, see Rule 10.

20
21 **(b) Hearings.** The complained-of judge may request the special committee to hold
22 a hearing for the purpose of presenting evidence, see Rule 10.
23

24 **(c) Attendance at hearings.** The complained-of judge shall have the right to
25 attend, and to receive a transcript of, any hearing held by the special committee. The complained-of
26 judge shall also have the right to receive copies of any documents presented to the committee at such
27 hearing.
28

29 **(d) Presentation of argument.** The special committee may, upon request, give
30 the complained-of judge leave, personally or through counsel, to present oral or written argument
31 at any hearing held by the committee. The committee shall grant the complained-of judge such leave
32 at the conclusion of its investigation and prior to the submission of its report to the Judicial Council.
33

34 **(e) Access to report of special committee.** The complained-of judge shall have
35 reasonable access to the report submitted by the special committee to the Judicial Council.
36

37 **(f) Representation by counsel.** The complained-of judge shall have the right to
38 be represented by counsel. The costs of such representation may be paid by the United States as
39 provided in Rule 14(d).
40

41 **Authority:** ~~§ 372(c)(11), (16)~~ 28 U.S.C. §§ 358, 361.
42
43

1 **RULE 12. RIGHTS OF COMPLAINANT**

2
3 (a) **Notice.** The complainant shall receive notice of the appointment of a special
4 committee, see Rule 4(~~b~~-c).

5
6 (b) **Opportunity to appear.** The complainant shall be afforded the opportunity
7 voluntarily to appear at hearings before the special committee, if the committee concludes that the
8 complainant could offer substantial information pertaining to the allegations of the complaint. At
9 no time, however, shall the complainant have the right to present argument to the committee either
10 personally or through counsel.

11
12 **Authority:** § ~~372(e)(4)(C), (11)(C), (13)~~ 28 U.S.C. §§ 353(a), 358(b), 359(b).

13
14
15 **Chapter V. Action by Judicial Council on Report of Special Committee**

16
17 **RULE 13. JUDICIAL COUNCIL ACTION**

18
19 (a) **Summary of actions.** After receipt of the report of the special committee and
20 the record of any hearings the committee may have conducted, the Judicial Council may dismiss the
21 complaint pursuant to paragraph (b); may direct the special committee or a committee of the **Judicial**
22 Council to conduct additional investigation pursuant to paragraph (c); may take corrective action
23 pursuant to paragraph (d); or may refer the complaint to the Judicial Conference of the United States
24 pursuant to paragraph (e).

25
26 (b) **Dismissal.** The Judicial Council may dismiss the complaint on any of the grounds
27 provided in Rule 4(~~a~~-b). The dismissal of the complaint shall be by written order setting forth the
28 ground(s) for the dismissal. The order shall identify the complainant and the complained-of judge
29 and shall be maintained by the Clerk under seal. The Circuit Executive shall provide to the
30 complainant and the complained-of judge a copy of the order and any separate or dissenting
31 statements issued by members of the **Judicial** Council, and shall inform them of the right to petition
32 the Judicial Conference of the United States for review. In addition to the order maintained under
33 seal, the Judicial Council shall issue an order that shall be part of the public record; such order shall
34 not identify, directly or indirectly, the complainant or the complained-of judge.

35
36 (c) **Additional investigation.** The Judicial Council may direct the special
37 committee or a committee of the **Judicial** Council to conduct additional investigation. The **Judicial**
38 Council shall notify the complained-of judge of the scope and purpose of such additional
39 investigation. Investigation by a committee of the **Judicial** Council shall be conducted in accordance
40 with procedures prescribed by Rules 9 through 12.

41
42 (d) **Corrective action.** If the complaint is not dismissed, the Judicial Council may
43 take such action as is appropriate to assure the effective and expeditious administration of the
44 business of the courts within the Eleventh Circuit, including, but not limited to, the following —
45

- (1) directing the chief judge of the district of a complained-of magistrate judge to take such action as the **Judicial** Council considers appropriate, including the initiation of removal proceedings under 28 U.S.C. § 631;
- (2) certifying the disability of a complained-of Article III judge, pursuant to the procedures and standards provided under 28 U.S.C. § 372(b);
- (3) requesting that a complained-of Article III judge voluntarily retire, with the provision that the length of service requirements under 28 U.S.C. § 371 shall not apply;
- (4) ordering that, on a temporary basis for a time certain, no further cases be assigned to a complained-of judge;
- (5) censuring or reprimanding a complained-of judge by means of public announcement;
- (6) censuring or reprimanding a complained-of judge by means of private communication;
- (7) ordering such other action as it considers appropriate under the circumstances, except that the **Judicial** Council may not order the removal from office of an Article III judge; the removal of a bankruptcy judge shall be in accordance with 28 U.S.C. § 152; and the removal of a magistrate judge shall be in accordance with 28 U.S.C. § 631.

Judicial Council action under this paragraph shall be taken by written order. The order shall be accompanied by a memorandum setting forth the facts and the reasons for the action, unless the disclosure of such facts and reasons would be contrary to the effective and expeditious administration of the business of the courts. The order shall also be accompanied by any separate or dissenting statements by members of the **Judicial** Council. Neither the accompanying memorandum nor any separate or dissenting statement shall identify, directly or indirectly, the complainant or the complained-of judge. The Circuit Executive shall provide a copy of the order, any accompanying memorandum, and any separate or dissenting statements to the complainant and the complained-of judge and shall notify them of the right to petition the Judicial Conference of the United States for review.

(e) Referral to Judicial Conference.

(1) The Judicial Council may refer the complaint, together with the record of any associated proceedings and the **Judicial** Council's recommendation for appropriate action, to the Judicial Conference of the United States.

(2) If the Judicial Council determines, on the basis of a complaint and an investigation under ~~§ 372(e)~~ **Chapter 16** and these Rules, or on the basis of information otherwise available to the **Judicial** Council, that an Article III judge may have engaged in conduct that might constitute one or more grounds for impeachment or that, in the interest of justice, is not amenable to resolution by the Judicial Council, the Judicial Council shall

certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

(3) The Judicial Council shall, unless contrary to the interests of justice, immediately notify the complainant and the complained-of judge of any action taken under this paragraph.

(f) **Availability of other actions.** The referral of a complaint to the Judicial Conference of the United States or to a district court under paragraph (d) shall not preclude the Judicial Council from taking any other action within its power under Chapter 16 and 28 U.S.C. §§ 332 and 372.

(g) **Effect of felony conviction.** In the case of a judge who is convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, such judge shall not hear or decide cases unless the Judicial Council determines otherwise.

Authority: § 372(c)(6), (7), (10); 28 U.S.C. §§ 332, 354, 364.

RULE 14. PROCEDURES FOR JUDICIAL COUNCIL ACTION

(a) **Release of report.** The Judicial Council may transmit a copy of the report of the special committee to the complainant and the complained-of judge.

(b) **Rights of complained-of judge.** Within 30 days after the submission of the report of the special committee to the Judicial Council, the complained-of judge may submit to the Judicial Council a written response to the committee's report. The complained-of judge shall have the right to present, personally or through counsel, oral or written argument to the Judicial Council concerning the appropriate disposition of the complaint. The complained-of judge shall not otherwise communicate with the Judicial Council, or any of its members, about the matter.

(c) **Voting.** Judicial Council action under Rule 13 shall be taken by a majority of its non-disqualified members. A decision to remove a bankruptcy judge from office shall be made pursuant to 28 U.S.C. § 152 and shall be by a majority of all of the members of the Judicial Council.

(d) **Expenses.** If the complaint has been dismissed under Rule 13(b), the Judicial Council may, upon the request of the complained-of judge, recommend that the Director of the Administrative Office of the United States Courts reimburse such judge for the reasonable expenses, including attorney's fees, incurred by him or her during the investigation of the complaint.

Authority: § 372(c)(11), (14)(A), (16); 28 U.S.C. §§ 152, 354, 360, 361.

1 **Chapter VI. Confidentiality and Public Availability of Materials**

2
3 **RULE 15. CONFIDENTIALITY**

4
5 **(a) Confidential matters.** The Chief Judge, the members of a special committee,
6 the members of the Judicial Council, and staff shall treat complaints, investigations, and proceedings
7 relating thereto as confidential matters. Any person who processes or serves subpoenas issued by
8 the Clerk, or who records or transcribes hearings or other proceedings before the special committee,
9 the Judicial Council, or a committee thereof, shall not disclose information relating to such activity
10 unless authorized to do so by the Chief Judge.

11
12 **(b) Files.** The files constitute all papers, documents, records of proceedings,
13 reports, and orders and accompanying memoranda relating to investigations of complaints, whether
14 maintained by the Chief Judge, the Clerk, members of a special committee, members of the Judicial
15 Council, or staff. The files shall be maintained separate and apart from all other files and records
16 with appropriate security precautions to ensure their confidentiality.

17
18 **(c) Availability to Judicial Conference.** If a complaint is referred to the Judicial
19 Conference of the United States under Rule 13(e), the Clerk shall provide the Judicial Conference
20 with copies of the report of the special committee and any other documents and records relating
21 thereto that were before the Judicial Council at the time of its referral. Upon request, the Clerk shall
22 furnish any other materials relating to the investigation to the Judicial Conference or its Committee
23 to Review Circuit Council Conduct and Disability Orders.

24
25 **(d) Availability to district court.** If the Judicial Council directs the initiation of
26 proceedings for removal of a magistrate judge under Rule 13(d)(1), the Clerk shall transmit to the
27 chief judge of the district court copies of the **Judicial** Council's order, any accompanying
28 memorandum, any separate or dissenting statements by members of the **Judicial** Council, the report
29 of the special committee, and any other materials that were before the **Judicial** Council at the time
30 of its action.

31
32 **(e) Availability to legislative branch.** The Judicial Council shall release to the
33 United States House of Representatives, the United States Senate, or any committee of either body
34 any materials relating to the complaint and the investigation thereof that such body or committee
35 deems necessary to an impeachment investigation or trial of the complained-of Article III judge.

36
37 **(f) Disclosure with consent of complained-of judge.** Materials from the files
38 may be disclosed to any person upon the written consent of both the complained-of judge and the
39 Chief Judge. The Chief Judge may require that the identity of the complainant, or of witnesses in
40 an investigation conducted by a special committee or the Judicial Council, be deleted from any
41 materials disclosed.

42
43 **(g) Assistance and consultation.** Nothing in this rule precludes the Chief Judge
44 or Judicial Council, for purposes of acting on a complaint filed under ~~§ 372(e)~~ **Chapter 16**, from

1 seeking the assistance of qualified staff, or from consulting other judges who may be helpful in the
2 process of complaint disposition.

3
4 **Authority:** ~~§ 372(c)(14)~~ **28 U.S.C. § 360.**
5
6

7 **RULE 16. PUBLIC DISCLOSURE**

8
9 Except as provided by Rules 3(d), 4(~~a-b~~), 7(c)(2), 13(b), and 15(f), complaints, records
10 of investigations and proceedings relating to allegations of judicial misconduct or disability shall be
11 maintained as confidential matters, and shall not be disclosed to the public.
12

13 **Authority:** ~~§ 372(c)(14)~~ **28 U.S.C. § 360.**
14
15

16 **Chapter VII. Miscellaneous Rules**

17 18 **RULE 17. DISQUALIFICATION OF JUDGES**

19
20 **(a) Judge as complainant.** If a complaint is filed by a judge, that judge is
21 disqualified from considering the complaint as a member of a special committee or the Judicial
22 Council. This paragraph does not apply to the identification of a complaint by the Chief Judge.
23

24 **(b) Complained-of judge.** A complained-of judge is disqualified from considering
25 the complaint (against such judge) as a member of a special committee or the Judicial Council,
26 except when required by the rule of necessity.
27

28 **(c) Chief Judge.** If a petition for review of a Chief Judge's order dismissing a
29 complaint is filed with the Judicial Council **and referred to a review panel**, the Chief Judge shall not
30 participate in the ~~Judicial Council's~~ **review panel's** consideration of the petition.
31

32 **(d) Member of special committee.** A member of the Judicial Council who is
33 appointed to a special committee is not disqualified from participating in the consideration by the
34 Judicial Council of the report of the special committee.
35

36 **(e) Judge under investigation.** A complained-of judge who is under investigation
37 by a special committee is disqualified from serving on (1) any special committee appointed under
38 Rule 4(~~b-c~~), (2) the Judicial Council, (3) the Judicial Conference of the United States, or (4) the
39 Committee to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of
40 the United States. Such disqualification continues until the complaint is finally disposed of by the
41 Judicial Council and is no longer subject to review by the Judicial Conference of the United States.
42

43 **(f) Substitute for disqualified Chief Judge.** If the Chief Judge is disqualified
44 under ~~§ 372(c)~~ **Chapter 16** and these Rules from considering the complaint, the duties and

responsibilities of the Chief Judge with respect to that complaint shall be assigned to the circuit judge in regular active service next senior to the Chief Judge.

Authority: ~~§ 372(e)(12)~~ 28 U.S.C. § 359.

RULE 18. SUCCESSIVE COMPLAINTS

(a) Against Chief Judge. The Clerk shall not file a complaint alleging that the Chief Judge, by dismissing a prior complaint, engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.

(b) Against members of Judicial Council. The Clerk shall not file a complaint alleging that a member of the Judicial Council, by affirming the dismissal of a prior complaint, engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.

(c) Against previously complained-of judge. The Chief Judge shall dismiss as successive any complaint of judicial misconduct that was the subject of a complaint that the Chief Judge previously disposed of under these rules.

Authority: ~~§ 372(e)(1)-(2)-(3)~~ 28 U.S.C. §§ 351, 352.

RULE 19. WITHDRAWAL OF COMPLAINTS AND PETITIONS FOR REVIEW

(a) Complaint pending before Chief Judge. A complainant may withdraw a complaint pending before the Chief Judge if the Chief Judge consents to the withdrawal.

(b) Complaint pending before special committee. A complainant may withdraw a complaint pending before a special committee if the special committee consents to the withdrawal.

(c) Complaint pending before Judicial Council. A complainant may withdraw a complaint pending before the Judicial Council if the Judicial Council consents to the withdrawal.

(d) Petition for review. A complainant may withdraw a petition for review of a Chief Judge's order dismissing a complaint at any time before ~~the Judicial Council~~ a review panel acts on the petition.

Authority: ~~§ 372(e)(11)~~ 28 U.S.C. § 358.

1 **RULE 20. COPIES OF STATUTE, RULES, AND FORM**

2
3 Copies of ~~§ 372(c)~~ **Chapter 16**, these Rules, and the complaint form described in Rule
4 1(a) are available on the court's web site at www.ca11.uscourts.gov, and without charge at the
5 office of the Clerk, United States Court of Appeals, 56 Forsyth Street, N.W., Atlanta, Georgia
6 30303, and at the office of the clerk of any district court or bankruptcy court within the Eleventh
7 Circuit.

8
9 **RULE 21. EFFECTIVE DATE**

10
11 These Rules apply to complaints filed on or after ~~January 1, 2002~~ **[insert date]**.
12 Complaints filed before that date shall also be governed by these Rules in effect at the time the
13 complaint was filed.
14

1 **JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT**

2
3
4
5 **COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY**
6 **UNDER ~~28 U.S.C. § 372(e)~~ CHAPTER 16**

7
8
9 To file a complaint of judicial misconduct or disability, please answer all of the
10 questions on this form and send three copies in an envelope to the Clerk, United States Court of
11 Appeals, 56 Forsyth Street, N.W., Atlanta, Georgia 30303. Please write “~~Section 372(e)~~ **Chapter**
12 **16 Complaint**” on the envelope. **Do not write the name of the complained-of judge on the**
13 **envelope.** This complaint must be legible; if possible, it should be typewritten. For other details,
14 see the Rules of the Judicial Council of the Eleventh Circuit Governing Complaints of Judicial
15 Misconduct or Disability.

16
17
18
19 **CONFIDENTIAL**

20
21
22
23 **IN THE MATTER OF A COMPLAINT FILED BY:**

24
25
26
27 _____
28 NAME OF COMPLAINANT

29
30 _____
31 ADDRESS

32
33 _____
34
35 (_____) _____
36 DAYTIME TELEPHONE NUMBER

37
38
39
40 **AGAINST:**

41
42
43 _____
44 NAME OF COMPLAINED-OF JUDGE

45
46
47 _____
48 COURT

1. Does this complaint concern a particular lawsuit? ☐ Yes ☐ No

If yes, please provide the following information about the lawsuit.
(If more than one lawsuit is involved, use additional pages, as necessary.)

COURT IN WHICH LAWSUIT WAS FILED

IF ANY

DOCKET NUMBER

DOCKET NUMBER OF APPEAL,

What is (or was) your role in the lawsuit?

☐ Party (including pro se) ☐ Attorney ☐ Juror ☐ Witness ☐ None of these

Please provide the name, address, and telephone number of your attorney in this lawsuit:

2. Have you filed a lawsuit against the judge? ☐ Yes ☐ No

If yes, please provide the following information about the lawsuit.
(If more than one lawsuit is involved, use additional pages, as necessary.)

COURT IN WHICH LAWSUIT WAS FILED

IF ANY

DOCKET NUMBER

DOCKET NUMBER OF APPEAL,

PRESENT STATUS OF LAWSUIT OR APPEAL

Please provide the name, address, and telephone number of your attorney:

3. On separate sheets of paper, no larger than the paper on which this form is printed, please describe the evidence of misconduct or disability that is the subject of this complaint. Do not use more than five single-sided pages.

4. Sign your name.

I declare under penalty of perjury that I have read Rule 1 of the Rules of the Judicial Council of the Eleventh Circuit Governing Complaints of Judicial Misconduct and Disability, and that the statements made in this complaint are true and correct to the best of my knowledge.

SIGNATURE OF COMPLAINANT

DATE